

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

THOMAS COOK; MEGAN DRESCH;)
LAURA GALABURDA; JACK GLOVER;) Civil Action No. 04-12546 GAO
DAVID HALL; MONICA HILL; JENNY)
LYNN KOPFSTEIN; JENNIFER McGINN;)
JUSTIN PEACOCK; JAMES E.)
PIETRANGELO II; DEREK SPARKS;)
STACY VASQUEZ,)
Plaintiffs,)
v.)
DONALD H. RUMSFELD, Secretary of)
Defense; MICHAEL CHERTOFF, Secretary of)
Homeland Security; UNITED STATES OF)
AMERICA,)
Defendants.)

)

NOTICE OF ERRATA (MISSING PAGE)

Defendants Donald H. Rumsfeld, Secretary of Defense; Michael Chertoff, Secretary of Homeland Security; and the United States of America, hereby provide notice to this Court that the copy of Senate Report No. 112, 103d Cong., 1st Sess. (1993), which was included in the appendix to the Memorandum of Law in Support of Defendants' Motion to Dismiss, failed to include page 272 of the Senate Report. We regret this inadvertent error, and have attached a copy of page 272 of the Senate Report hereto.

Respectfully submitted,

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While the members of the military are not excluded from the protection granted by the First Amendment, the different character of the military community and of the military mission requires a different application of those protections. *Id.* at 758.

[T]he military must insist upon a respect for duty and a discipline without counterpart in civilian life. *Schlesinger v. Councilman*, 420 U.S. 738, 757 (1975).

[C]ourts are 'ill-equipped to determine the impact upon discipline that any particular intrusion upon military authority might have.' *Chappell v. Wallace*, 462 U.S. 296, 305 (quoting Chief Justice Earl Warren, "The Bill of Rights and the Military," 37 N.Y.U.L. Rev. 181, 187 (1962)).

Our review of military regulations challenged on First Amendment grounds is far more deferential than constitutional review of similar laws or regulations designed for civilian society. . . . *Goldman v. Weinberger*, 475 U.S. 503, 507 (1986).

[T]o accomplish its mission, the military must foster instinctive obedience, unity, commitment, and esprit de corps. *Id.*

"The essence of military service 'is the subordination of the desires and interests of the individual to the needs of the service.'" *Id.* (quoting *Orloff v. Willoughby*, 345 U.S. 83, 92 (1953)).

"[W]hen evaluating whether military needs justify a particular restriction on religiously motivated conduct, courts must give great deference to the professional judgment of military authorities concerning the relative importance of a particular military interest." *Id.*

In summary, Article I, section 8 of the Constitution commits exclusively to the Congress the powers to raise and support armies, provide and maintain a Navy, and make rules for the government and regulation of the land and naval forces. Pursuant to these powers, it lies within the discretion of the Congress to determine qualifications for and conditions of service in the armed forces.

Military service is a unique calling in which the rights of individuals are subordinated to the needs of national defense

The primary mission of the armed forces is to defend our national interests by preparing for and, when necessary, waging war, using coercive and lethal force. Responsibility for the awesome machinery of war requires a degree of training, discipline, and unit cohesion that has no parallel in civilian society.

The armed forces must develop traits of character, patterns of behavior, and standards of performance during peacetime in order to ensure the effective application and control of force in combat. Members of the armed forces are subject to disciplinary rules and military orders at all times, twenty-four hours a day, regardless of whether they are actually performing a military duty.

Military service is a unique calling. It is more than a job. Our nation asks the men and women of the armed forces to make extraordinary sacrifices to provide for the common defense. While civilians remain secure in their homes, with broad freedom to live